



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/509,274	06/09/2005	Jean Hardy	P/3255-81	7664
2352	7590	06/30/2006	EXAMINER	
OSTROLENK FABER GERB & SOFFEN 1180 AVENUE OF THE AMERICAS NEW YORK, NY 100368403			HOOK, JAMES F	
			ART UNIT	PAPER NUMBER
			3754	

DATE MAILED: 06/30/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/509,274	<b>Applicant(s)</b> HARDY ET AL.	
	<b>Examiner</b> James F. Hook	<b>Art Unit</b> 3754	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 27 September 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>9/27/04</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4, 9, and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Hardy.

Claims 6-8 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Hardy. The reference to Hardy also discloses that UV additives can be provided to the second polymer sheath. The reference to Hardy does not specifically set forth values as set forth in claims 6-8, however, without any claimed additives which would alter the different properties of the materials used, it is considered that the various properties and values thereof set forth in claims 6-8 are inherent to the material used and since Hardy has the same materials disclosed inherently would meet these limitations. However, if such are not considered inherent, these limitations are nothing more than mechanical expedients and it would have been obvious to one skilled in the art to use routine experimentation to arrive at optimum values to meet the needs of the user and such only requires routine skill in the art.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hardy (641) in view of Fisher (141). The patent to Hardy discloses the recited flexible tubular pipe comprising from the inside outward, at least one impervious inner polymer sheath 12, one or more layers of reinforcement 13, 14, and 16, at least one second polymer sheath which can include an intermediate sheath 15 or an outer protective sheath 17, where these sheaths can be formed of a thermoplastic, where the thermoplastic can include a polyolefin, including a crosslinkable grafted olefin, where polypropylene is within the family of polyolefins and is included under the broader term set forth in the reference. The reference to Hardy also discloses that UV additives can be provided to the second polymer sheath. The reference to Hardy does not specifically set forth values as set forth in claims 6-8, however, without any claimed additives which would alter the different properties of the materials used, it is considered that the various properties and values thereof set forth in claims 6-8 are inherent to the material used and since Hardy has the same materials disclosed inherently would meet these limitations. However, if such are not considered inherent, these limitations are nothing more than mechanical expedients and it would have been obvious to one skilled in the art to use routine experimentation to arrive at optimum values to meet the needs of the user and such only requires routine skill in the art. The patent to Hardy discloses all of

the recited structure with the exception of forming the sheaths of thermoplastic elastomer (TPE) using a specific type of elastomer. The patent to Fisher discloses that it is old and well known in the art to form sheaths 80 of either thermoplastics such as polyolefins or TPE's where EPDM and various other rubbers can be used to form the TPE. It would have been obvious to one skilled in the art to modify the sheaths in Hardy by adding a rubber such as EPDM to form a TPE of the sheath as suggested by Fisher as such is a known equivalent material to make sheaths out of and would increase the flexibility of the tube.

### ***Conclusion***

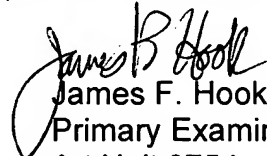
The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The references to Fisher (770), Igarashi, Strassel, Hardy (335), and Lundberg disclosing state of the art hoses.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James F. Hook whose telephone number is (571) 272-4903. The examiner can normally be reached on Monday to Wednesday, work at home Thursdays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on (571) 272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3754

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
James F. Hook  
Primary Examiner  
Art Unit 3754

JFH